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DEC. 15
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 105.

EASTERN-CENTRAL MOTOR CARRIERS ASSOCIATION, MIDDLE ATLANTIC STATES MOTOR CARRIER CONFERENCE INC., and CENTRAL STATES MOTOR FREIGHT BUREAU, INC., *Appellants*,

v.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellees*.

REPLY OF APPELLANTS TO THE BRIEF IN BEHALF OF INTERVENOR THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

CHARLES E. COTTERILL,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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REPLY OF APPELLANTS TO THE BRIEF IN BEHALF OF INTERVENOR THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Appellants respectfully submit the following short reply to the brief in behalf of The National Industrial Traffic League which was allowed by the Court to intervene on motion granted December 6, 1943.

I.

THE CITATION OF OTHER COMMISSION DECISIONS HOLDING UNLAWFUL MOTOR CARRIER MINIMUM WEIGHTS EXCEEDING INDIVIDUAL TRUCKLOAD QUANTITIES.

The League calls to attention that the decision of the Commission in the present case is one of a series of other recent ones like it which, on insistent protests of motor car-

rier interests throughout the country, the full Commission agreed to review by selecting this one as a test. Then counsel for the League turn around and cite the others of that same series of decisions as if supporting the present one.

When, with respect to a particular question of law, the point of view of the Commission is under examination by this Court, it adds no weight to the particular decision of the Commission under review that it has rendered a like decision in a series of other similar and recent cases.

II.

THE MATTER OF "POLICY."

Counsel for the League in their brief engage in much discussion of appellants' contention that by its own words the Commission decided this case upon considerations of its own policy and not that of Congress. Appreciating the seeming force of that contention of appellants the League endeavors to overcome it by ignoring the words which the Commission used and by attributing to the Commission nothing more than the statement of "doctrines and applied recognized rate making principles which are within and in inconsonance with the national policy of transportation as declared by the Congress."

In short the League seeks to support the Commission's order on the independent ground that it *is* consonant with the policy of Congress no matter what ground the Commission put its decision upon. But the Commission did not put its decision upon the ground of anything required by the "National Transportation Policy." The language used by it was that "*we* adopt as a policy." Not a word is said by the Commission concerning the intention of Congress itself in a factual situation of this kind. While the statute is quoted from by the Commission in that part of it which requires that motor carrier rates shall be as low as consistent with the maintenance of sound and efficient trans-

portation that particular part of the statute does not go to any of the questions of law here involved.

III.

THE REFERENCE TO CASES INVOLVING RAILROAD MINIMUM WEIGHTS.

Like government counsel and like the Commission itself the League, in its brief, stresses the long standing requirement of the Commission that the minimum weights which railroads may prescribe on their quantity shipments shall be influenced largely by the commercial units of buying and selling but shall not exceed the weights that may be loaded in individual railroad cars. It is considered by the League that those old decisions of the Commission dealing with railroads have acquired the force of law by reason of their consistency throughout fifty years of railroad regulation and that, therefore, the Commission may also now require motor carriers (the new form of transportation) to limit their minimum weights on quantity shipments to amounts that may be loaded into single *truck* vehicles "usually used."

That is the nub of this case. All of the appellees say the Commission may do that; appellants respectfully say the Commission may not. The reason for the rule in railroad cases has always been that trade and commerce have in general been accustomed to buying and selling commodities in quantities either somewhat less than but in any event no greater than single railroad carloads. Should the railroads offer still lower rates on "multiple cars" such as "trainloads" the Commission considers (rightly) that in practical effect they would result in unlawful favoritism of a comparatively few large shippers.

Here the motor carriers are not seeking to offer "multiple truck" rates. They are not seeking to prescribe motor carrier minimum weights on quantity shipments greater than ordinary commercial units of buying and selling. They are not seeking to introduce into trade and commerce any

new and larger minimum weights than the railroads prescribe. They ask only to be permitted to compete with the railroad carload rates and minimum weights and thus offer to the public the alternative service of motor or rail transportation on equal terms. They can "afford" to do so in the sense that their resulting earnings although not fully profitable will not be unduly low to themselves. For those shippers who may wish to sell in smaller lots corresponding to single motor vehicle loads a slightly higher but still just and reasonable rate, to be governed by a minimum weight of 20,000 pounds, would be offered. Because, in order to compete, motor carriers seek to maintain lower than their normal truckload rates on the larger quantities represented by railroad carload minimum weights is not an index of illegality.

There is no rational relation between the sizes of motor truck vehicles and lawful motor carrier quantity minimum weights made to meet railroad competition so long as the required motor carrier minimum weights are within established trade units of purchase and sale and do not in practical effect operate as a discrimination in favor of a few or a class of large shippers.

In the absence of an actual discrimination between different shippers the offering of a choice of two rates based on the quantity tendered at one time, each within the zone of reasonableness and the lower made to meet carrier competition, the absence of a difference in motor carrier operating expense is not material in law.

Respectfully submitted,

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Dated: December 14, 1943.